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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

New York, N.Y.

4 v.

13 CR 290 (PAC)

5 CHRISTINA CHAI and HI JONG  
6 LEE,

7 Defendants.

8  
9 September 24, 2014  
10 9:00 a.m.

11 Before:

12 HON. PAUL A. CROTTY,

13 District Judge

14 APPEARANCES

15 PREET BHARARA

16 United States Attorney for the  
17 Southern District of New York

18 BY: ELISHA KOBRE

19 DANIEL TEHRANI

20 Assistant United States Attorneys

21 BRAFMAN & ASSOCIATES, P.C.

22 Attorneys for Defendant Chai

23 BY: MARC A. AGNIFILO

24 JACOB KAPLAN

25 SERCARZ & RIOPELLE

Attorneys for Defendant Lee

BY: ROLAND G. RIOPELLE

GIULIANA GRAHAM

Also Present: Robert Polimeno, DEA

Nicholas Evert, Paralegal

ARIEN GREENE-PINTO, Korean Interpreter

KYCONG SILK SONG, Korean Interpreter

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(In open court; jury not present)

1:50 p.m.

THE DEPUTY CLERK: All rise.

THE COURT: Please be seated.

What I intend to do is call the jury in at 2:00 o'clock and excuse them, tell them we'll resume our deliberations on Friday at 9:30 in the morning.

MR. AGNIFILO: That's fine, Judge.

MR. RIOPELLE: Thank you, your Honor.

MR. KOBRE: Thank you, Judge.

THE COURT: Mr. Riopelle, with regard to your proposed charge and the Allen charge, if we get to that.

MR. RIOPELLE: Yes.

THE COURT: I'm going to give the charge that I distributed earlier. It's based on the language of the United States against Henry in the Second Circuit.

MR. RIOPELLE: I understand.

THE COURT: Almost in haec verba.

MR. RIOPELLE: There's one portion of that charge that I would -- and I understand your Honor's intention -- there is one portion of that charge that I would ask the Court to remove, and that is the invitation to the jury to return a partial verdict.

THE COURT: In that connection, I want to call to your attention two cases, and I'd appreciate whatever suggestions

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1 you have. United States of America against Klein, which is  
2 decided in 1978, 582 Fed. 2d, 186, and United States of America  
3 against McQueen, 596 Fed. 2d, 76, both of which deal with the  
4 issue about the Court's inquiry after an extended period of  
5 time, sometimes with and sometimes without a notion that the --  
6 or a note from the jury saying that they're deadlocked. It  
7 allows the judge to ask questions on exactly where you stand,  
8 have you reached a verdict, can you reach a verdict, we'll take  
9 a partial verdict.

10 MR. RIOPELLE: Yes.

11 THE COURT: So that's what I want you to think about.

12 MR. AGNIFILO: Can I just get the page number on  
13 McQueen again, Judge? That's the second one.

14 THE COURT: McQueen, is 596 Fed. 2d, 76.

15 MR. AGNIFILO: 76, thank you, Judge.

16 THE COURT: It's decided in -- they're older cases.  
17 They're decided in -- McQueen was decided in 1979, and the  
18 Klein case was decided in 1978.

19 MR. RIOPELLE: And what was the citation on Klein  
20 again, your Honor?

21 THE COURT: On Klein? 582 Fed. 2d, 186.

22 MR. RIOPELLE: I'll look at those cases, Judge. I  
23 have had a couple of situations in my day where the court has  
24 made an inquiry about a partial verdict.

25 I can tell you what my experience has been on that,

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1 but I certainly will read these cases and get back to your.

2 On the two occasions when it's happened during my  
3 career, the court simply asked the jury a question and asked  
4 them to respond to it in writing; do you have a verdict as to  
5 either defendant on any count. And then if that comes back  
6 yes, the court then instructs the jury, you may return that  
7 verdict that you have, if you wish to, but if you do so it is  
8 final and you may not revisit it.

9 THE COURT: I'm not thinking of doing this without  
10 hearing from you first.

11 MR. RIOPELLE: Yeah, and that I'm telling --

12 THE COURT: The question will be posed to the jury in  
13 writing, and with a response in writing.

14 MR. RIOPELLE: Yeah. And that's my experience as to  
15 how it's been done on the two times it's been done when I've  
16 been a litigant.

17 THE COURT: Now the government's been silent. So if  
18 you want to make a suggestion, I'd appreciate that as well.

19 MR. TEHRANI: Yes, Judge.

20 MR. KOBRE: Yes, Judge.

21 MR. AGNIFILO: Your Honor, I'll read the two cases.

22 And in the meantime since we have a day off, I'll also  
23 read the -- Sand has instructions and annotations on this as  
24 well.

25 THE COURT: Yes.

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1 MR. AGNIFILO: So I'll make sure that I'm prepared  
2 with that.

3 THE COURT: The instructions are at page 9-8.

4 MR. AGNIFILO: Correct.

5 THE COURT: If you're only able to reach a verdict  
6 concerning some of the defendants or some of the counts, you  
7 may return a verdict concerning those defendants.

8 I have that language too.

9 MR. AGNIFILO: Right. I guess the event that seems to  
10 have not happened quite yet is that the jury has indicated some  
11 inability to --

12 THE COURT: Correct.

13 MR. AGNIFILO: -- agree. So we don't know what the  
14 future holds in that regard, so.

15 THE COURT: Right. I don't think it's appropriate  
16 that I say anything now.

17 MR. AGNIFILO: I agree with you.

18 THE COURT: I don't intend to say anything.

19 MR. AGNIFILO: No, I understand.

20 THE COURT: Other than you're excused, come back on  
21 Friday.

22 MR. AGNIFILO: I understand, I understand. Thank you,  
23 Judge.

24 MR. RIOPELLE: And I would only say that the couple  
25 times this has come up, the two cases that have been cited in

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1 my experience in this process are a case called United States  
2 against Dilapi, D-i-l-a-p-i, which is at 651 F.2d, 140, so it's  
3 pretty close in time to U.S. against Klein. And there's also  
4 one United States against Dolah, which is a recent one I think,  
5 245 F.3d, 98. So those might be worth looking at too.

6 THE COURT: Okay, I'll look at those.

7 Anything else to take up?

8 MR. AGNIFILO: Nothing from us, Judge. Thank you.

9 MR. RIOPELLE: No, Judge.

10 MR. TEHRANI: No, your Honor.

11 THE DEPUTY CLERK: All rise.

12 (Jury entering)

13 1:57 p.m.

14 THE COURT: Please be seated.

15 Ladies and gentlemen, as I told you yesterday, we're  
16 going to break a little bit early today because some of us are  
17 going to be observing the Jewish holiday Rosh Hashanah, which  
18 starts at sundown today. We won't sit tomorrow in observance  
19 of the holiday. But we'll resume our deliberations on Friday  
20 morning at 9:00 or 9:30, whenever you get here.

21 So I hope you have a nice day and a half off, and keep  
22 your minds open. Resume your discussions and your  
23 deliberations on Friday when you return.

24 If you come in at 9:00 o'clock, that would be fine.  
25 We'll see you then, thank you very much.

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1 THE DEPUTY CLERK: All rise.

2 (In open court; jury not present)

3 MR. RIOPELLE: Thank you, your Honor.

4 MR. AGNIFILO: Thank you, Judge.

5 THE COURT: Anything else?

6 MR. KOBRE: Thank you.

7 MR. AGNIFILO: No. Thank you, Judge.

8 THE COURT: See you on Friday morning.

9 MR. RIOPELLE: Yes, Judge.

10 (Adjourned to September 26th, 2014 at 9:00 a.m.)